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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 1, 2002

APPLICATION OF

THE CITY OF DANVILLE d/b/a  
DANVILLE DEPARTMENT OF UTILITIES

CASE NO. PUC-2002-00128

For certificates of public  
convenience and necessity to  
provide local exchange  
telecommunications services

FINAL ORDER

On July 1, 2002, the City of Danville d/b/a Danville Department of Utilities ("Danville" or the "Company"), filed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services in the City of Danville and the counties of Halifax, Henry, Patrick, and Pittsylvania.

By Order dated July 22, 2002, the Commission issued an Order for Notice and Comment, which directed the Company to provide notice to the public of its application and directed the Commission Staff to conduct an investigation and file a Staff Report. The Commission received written notices of participation from Verizon Virginia Inc., and Verizon South Inc.

(collectively, "Verizon").<sup>1</sup> Central Telephone Company of Virginia ("Sprint") and Verizon filed comments.<sup>2</sup> Danville filed a response to the comments of Sprint and Verizon. No requests for a hearing on the application of Danville were received.

On September 11, 2002, the Company filed proof of publication and proof of service as required by the Order for Notice and Comment. On September 30, 2002, the Staff filed its Report. Danville filed its Response to the Staff Report on October 4, 2002, which indicated that the Company had no objection to the recommendations contained therein. Also in response to the Staff Report, Sprint filed Supplemental Comments on October 22, 2002.

The initial comments filed by Sprint address the specific service area being requested by Danville. Sprint states that Danville's application appears to be unclear as to what service area Danville is requesting (i.e., the specific territory listed, or, statewide) in its application. Sprint does not specifically object to granting a certificate to Danville, but Sprint does request to participate in the approval process of any proposed rates and asks the Commission to order Danville to

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<sup>1</sup> Additionally, the Virginia Cable Telecommunications Association filed a request to be placed on the official service list in the proceeding.

<sup>2</sup> While Sprint and Verizon both styled their filings as comments, the comments of each included motions which will be addressed in this Order.

provide Sprint a copy of any proposed rates and to hold a hearing on any proposed rates.

Verizon, in its comments, states that a certificate should not be granted to any locality before the Commission promulgates rules pursuant to the provisions of § 56-265.4:B.5 of the Virginia Code. Specifically, Verizon asserts that the Commission should adopt rules providing competitive safeguards before permitting a locality to provide telecommunications services.

In its September 30, 2002, Report, the Staff finds that Danville's application is in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Rules").<sup>3</sup> Based upon its review of Danville's application, the Staff determines that it would be appropriate to grant the Company a certificate to provide local exchange telecommunications services, as requested, subject to the following conditions: (1) should Danville collect customer deposits, it shall establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow

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<sup>3</sup> The Local Rules were adopted in Case No. PUC-1995-00018 by Order dated December 13, 1995, and are codified at 20 VAC 5-400-180.

arrangement at its inception and any subsequent change (any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary); and (2) at such time as voice services are initiated by Danville, it shall comply with all requirements of § C (Conditions for Certification) of the Commission's Local Rules.

NOW THE COMMISSION, having considered the pleadings and the applicable law, finds that the Company should be granted a certificate to provide local exchange telecommunications services. We note that Danville, once it plans to offer local exchange telecommunications services, must file tariffs with the Commission's Division of Communications pursuant to the Local Rules. Danville is directed to serve a copy of its initial tariffs on the service list for this case. We will not rule upon Sprint's request for a hearing on Danville's rates at this time; Sprint may renew its request once Danville proposes to offer local exchange telecommunications services.

The Commission adopts the recommendations of the Staff Report. We reject Verizon's contention that the Commission must adopt new rules or safeguards before we may certificate Danville to provide local exchange telecommunications services. We fully expect Danville, or any other local exchange carrier that currently has or will obtain a certificate, to comply with the

Code of Virginia and this Commission's existing Local Rules and any subsequently adopted rules.<sup>4</sup>

Both Verizon and Sprint oppose a portion of the territory requested by Danville to be certificated. Verizon argues that for Danville to have electric distribution facilities within Patrick County, it must also have retail customers in Patrick County. Danville responds that its Pinnacles Hydroelectric Plant in Patrick County provides power to the powerhouse and five residences located in Patrick County over a 12.47 kV distribution system. The Staff Report agrees that this constitutes distribution facilities in Patrick County, even if the residences are owned by Danville and there are no retail customers. We find no requirement in § 15.2-2160 A that Danville must serve retail customers with its distribution facilities in Patrick County. Therefore, Danville has satisfied the statutory requirement for providing telecommunications services within Patrick County.

Sprint argues in its Supplemental Comments that Danville should be allowed to offer telecommunications services only in the unincorporated areas of Patrick County. Sprint reasons that because § 15.2-2160 A limits Danville to providing

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<sup>4</sup> On October 15, 2002, the Commission issued an Order For Notice and Comment and/or Requests for Hearing on Proposed Rules, Case No. PUC-2002-00115. The proposed Rules include new regulatory requirements pursuant to § 56-265.4:4 and § 15.2-2160 of the Code of Virginia.

telecommunications services only where it has electric distribution system facilities, and "localities" is defined by § 15.2-102 to mean county, city, or town, then Danville must have electric distribution system facilities as of March 1, 2002, within the Town of Stuart, a locality within Patrick County, in order to serve the Town of Stuart. Danville did not represent that it had electric distribution system facilities in the Town of Stuart.

Pursuant to § 15.2-102 of the Code of Virginia a "locality" means a county, city, or town as the context may require. We must determine the meaning of "locality" within the context of § 15.2-2160 A, which restricts the provision of telecommunications services to within any locality in which it has electric distribution system facilities as of March 1, 2002.

Article VII, Section 1 of the Constitution of Virginia defines "town," in pertinent part, to mean any existing town or an incorporated community within one or more counties which became a town as provided by law. Thus we conclude, for the purpose of applying § 15.2-2160 A, that a town is within the locality of the surrounding county. Since § 15.2-2160 A allows Danville to provide telecommunications services within the locality of Patrick County, and since the Town of Stuart is within Patrick County, we conclude that Danville would be permitted by the statute to provide telecommunications services

in the Town of Stuart if Danville were found to have electric distribution facilities within Patrick County.

We find that Danville did have "electric distribution facilities" within Patrick County as of March 1, 2002, and therefore meets the statutory requirement set forth at § 15.2-2160 A of the Code of Virginia. Thus, Danville may serve Patrick County and the Town of Stuart.

The Staff Report indicates that Danville agrees to meet all conditions for certification identified in § C of the Local Rules. Danville has also agreed to "comply with all rules and regulations of the Commission and laws of the Commonwealth of Virginia [and] intends to comply with the applicable and duly-promulgated safeguards or requirements mandated by House Bill 1021 enacted by the 2002 Session of the Virginia General Assembly."<sup>5</sup>

Accordingly, IT IS ORDERED THAT:

(1) Danville is hereby granted a certificate of public convenience and necessity, No. T-594, to provide local exchange telecommunications services in the City of Danville and counties of Halifax, Henry, Patrick, and Pittsylvania. This certificate is subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service,

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<sup>5</sup> Staff Report, p.6.

§ 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Should Danville collect customer deposits, it shall establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(3) At such time as voice services are initiated by Danville, it shall comply with all requirements of § C of the Local Rules.

(4) Danville shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations before it begins offering local exchange telecommunications services. Danville shall serve upon the service list for this case a copy of those tariffs.

(5) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.